

SCO Grp v. Novell Inc

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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

<p>THE SCO GROUP, INC., a Delaware corporation, Plaintiff and Counterclaim-Defendant, vs. NOVELL, INC., a Delaware corporation, Defendant and Counterclaim-Plaintiff.</p>	<p>NOVELL INC.'S <i>EX PARTE</i> MOTION FOR LEAVE TO FILE AN OVERLENGTH REPLY MEMORANDUM Case No. 2:04CV00139 Judge Dale A. Kimball</p>
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Defendant and Counterclaim-Plaintiff Novell, Inc., through its attorneys of record, and pursuant to DuCivR 7-1(e), hereby moves the Court for an order granting it leave to file a reply memorandum in support of Novell's Motion to Stay Claims Raising Issues Subject to Arbitration ("Motion to Stay") that exceeds the page limitations of DuCivR 7-1(b)(3). Novell requests that it

be allowed to file a reply that does not exceed fourteen pages, exclusive of face sheet, table of contents, table of authorities, statement of issues and summary of argument.

Novell requires an extension of the page limitations specified in DuCivR 7-1(b)(3) due to the length and breadth of the opposition memorandum filed by Plaintiff and Counterclaim-Defendant The SCO Group, Inc. ("SCO") in response to Novell's Motion to Stay. SCO filed an overlength opposition (with the Court's permission) that is twenty-six pages long, consisting of a two-and-a-half page preliminary statement, approximately five pages of background information, and approximately eighteen pages of argument. Further, SCO attached over 100 pages of exhibits to its opposition in an effort to defeat Novell's Motion to Stay.

Novell has endeavored to be as concise as possible in drafting its arguments contained in the Reply in Support of Novell, Inc.'s Motion to Stay Claims Raising Issues Subject to Arbitration, but to adequately apprise the Court of the proper application of the Federal Arbitration Act to claims brought upon arbitrable *issues*, which include at least four of SCO's five claims for relief, Tenth Circuit precedent recognizing the Court's discretionary authority to stay SCO's remaining claim, and the relevant case law and underlying facts that demonstrate the defective nature of SCO's "waiver" theory, a reply consisting of approximately fourteen pages, exclusive of face sheet, table of contents, table of authorities, statement of issues and summary of argument, is necessary.

For the foregoing reasons, Novell submits that good cause and exceptional circumstances exist for the filing of an overlength reply, and respectfully requests that it be granted leave to file the requested Reply in Support of Novell, Inc.'s Motion to Stay Claims Raising Issues Subject to Arbitration.

DATED: June 19, 2006

ANDERSON & KARRENBERG

/s/ Heather M. Sneddon

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-and-

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